

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 860 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHCHANDRA POPATLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PRANAV G DESAI for Petitioner

MR LR PUJARI, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 25/07/96

ORAL JUDGEMENT

The petitioner has challenged the order passed by the Tribunal in Appeal No.321/89 dated 29.11.90 confirming the order of the Competent Authority, respondent No.2, recorded on 28.2.88 whereby surplus land to the extent of 11557.82 sq. mtrs. came to be declared, by filing this petition under Article 226/227 of the Constitution of India.

The learned counsel for the petitioner Mr Desai has raised following two contentions:

- (1) That the authorities below have seriously erred in including the built up area and constructed portion in the expression of vacant land and therefore, both the orders are illegal; and
- (2) That the impugned orders recorded by the Competent Authority is passed without giving an opportunity of hearing to the petitioner.

It is found from Form No.1 under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 and also from the record that some of the properties are constructed and out of the properties declared some properties are residential and some are commercial. In the case of Meera Gupta v. State of West Bengal, 1992 SC 1567, it is held that the land built upon or under construction on the appointed day must be excluded from the connotation of vacant land. The ratio propounded in Meera Gupta's case (supra) is that the expression "vacant land" occurring in first portion of section 4(a) connotes lands minus land under building constructed or in process of construction on or before the appointed day. The Competent Authority and the Appellate Authority have failed to consider this aspect. Prima facie, there appears to be substance in the contention that the petitioner was not afforded an opportunity of hearing. No doubt, attempt was made that the land under construction was by authorised permission. But this aspect is required to be examined and considered by the Competent Authority after the remand and this Court is not inclined to examine the said aspect in this petition. In other words, whether there was construction on the appointed day and if yes, whether it was an authorised one will have to be shown by the petitioner before the Competent Authority after remand.

The contentions raised on behalf of the petitioners are quite weighty and accepted. In the circumstances, the matter is required to be remanded to the Competent Authority, respondent No.2, for reconsideration and for fresh inquiry after giving an opportunity of hearing including leading of evidence to the petitioner.

In the result, the impugned orders of the Competent Authority and Appellate Authority are quashed and set aside and the case is remitted to the Competent Authority, respondent No.2, for a fresh inquiry in

accordance with law after giving an opportunity of hearing to the petitioner. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

.....